

***United States Court of Appeals  
for the Second Circuit***



**BRIEF FOR  
APPELLANT**





UNITED STATES COURT OF APPEALS  
FOR THE SECOND JUDICIAL CIRCUIT

DOCKET NUMBER 76-7147

**76-7147**

BISWANATH HALDER,

PLAINTIFF-APPELLANT,

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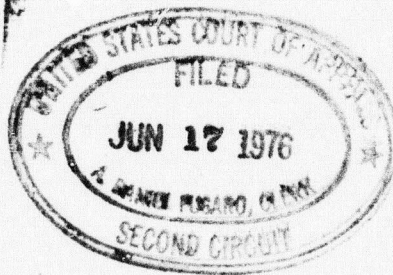
INFORMATICS, INCORPORATED,

EQUIMATICS, INCORPORATED,

DEFENDANTS-APPELLEES.

APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

BRIEF FOR PLAINTIFF-APPELLANT



BISWANATH HALDER

APPELLANT PRO SE

173-17 65 AVENUE

FRESH MEADOWS, NY 11365



TABLE OF CONTENTS

TABLE OF CASES . . . . .	iii
TABLE OF STATUTES AND RULES . . . . .	ix
ISSUES PRESENTED . . . . .	i
STATEMENT OF FACTS . . . . .	2
ARGUMENT . . . . .	6
POINT I      OPEN DISCLOSURE OF ALL POTENTIALLY RELEVANT INFORMATION IN THE ADVERSARY SYSTEM OF JUSTICE IS BOTH FUNDAMENTAL AND COMPREHENSIVE .	10
POINT II      DISMISSAL OF THE COMPLAINT FOR LACK OF PROSECUTION WHEN THE PLAINTIFF	



HAS BEEN PROSECUTING IT  
VIGOROUSLY IS NOTHING BUT  
JUDICIAL USURPATION AND  
OPPRESSION AND CAN NEVER  
BE UPHOLD WHERE JUSTICE IS  
JUSTLY ADMINISTERED . . . . . 19

CONCLUSION . . . . . 29



# TABLE OF CASES

1. ALEXANDER V GARDNER-DENVER COMPANY,  
1974, 415 U.S. 36, 94 S.Ct. 1011, 39 L.Ed.2d 147. . . . 27
2. ATLANTIC GREYHOUND CORPORATION V  
LAURITZEN, 182 F.2d 540, CA 6 1950. . . . 17
3. BAKER V F & F INVESTMENT, 470 F.2d 778,  
CA 2 1972, CERT. DEN. 1973, 411 U.S. 966,  
93 S.Ct. 2147, 36 L.Ed.2d 686. . . . 16
4. BANK OF AMERICA NATIONAL TRUST AND  
SAVINGS ASSOCIATION V HAYDEN, 231  
F.2d 595, CA 9 1956. . . . 17
5. BOOTH V PRINCE GEORGE'S COUNTY,  
MARYLAND, 66 F.R.D. 466, DC MD 1975. . . . 16
6. BOWE V COLGATE-PALMOLIVE COMPANY,  
416 F.2d 711, CA 7 1969. . . . 27
7. BROWN V O'LEARY, 512 F.2d 485, CA  
5 1975. . . . 22
8. BROWN V THOMPSON, 430 F.2d 1214,  
CA 5 1970. . . . 22



9. BURNS V THIOKOL CHEMICAL CORPORATION.  
483 F.2D 300, CA 5 1973. . . . . 16,17
10. BUSH V UNITED STATES POSTAL SERVICE.  
496 F.2D 42, CA 4 1974. . . . . 21,22
11. CARTER V BALTIMORE & O.R. COMPANY.  
152 F.2D 129, CA DC 1945. . . . . 17
12. CONNOLLY V PAPACHRISTID SHIPPING  
LIMITED, 504 F.2D 917, CA 5 1974. . . . . 21
13. COUNCIL OF FEDERATED ORGANIZATIONS  
V MIZE, 339 F.2D 898, CA 5 1964. . . . . 20
14. DAVIS V OPERATION AMIGO, 378 F.2D 101,  
CA 10 1967. . . . . 20
15. DURGIN V GRAHAM, 372 F.2D 130, CA 5  
1967. . . . . 21
16. DURHAM V FLORIDA EAST COAST RAILWAY  
COMPANY, 385 F.2D 366, CA 5 1967. . . . . 21
17. DYOTHERM CORPORATION V TURBO MACHINE  
COMPANY, 392 F.2D 146, CA 3 1966. . . . . 20
18. FLAKSA V LITTLE RIVER MARINE  
CONSTRUCTION COMPANY, 389 F.2D 885,



- CA 5 1968, CERT. DEN. 1968, 392 U.S. 928,  
88 S.Ct. 2287, 20 L.Ed. 2d 1387. . . . . 19
19. FRANKS V NATIONAL DAIRY PRODUCERS  
CORPORATION, 41 F.R.D. 234, WD TX 1966. . 15
20. GALPIN V PAGE, 1873, 85 U.S. (18 WALL)  
350, 24 L.Ed. 959. . . . . 24
21. GRIGGS V DUKE POWER COMPANY, 1971, 401  
U.S. 424, 91 S.Ct. 849, 28 L.Ed. 2d 158. . . 10, 11
22. HERCULES POWDER COMPANY V ROHM & HAAS  
COMPANY, 3 F.R.D. 302, DC DE 1943. . . . . 12
23. HICKMAN V TAYLOR, 1947, 329 U.S. 495,  
67 S.Ct. 385, 91 L.Ed. 451. . . . . 8, 11, 13
24. HORMEL V HELVERING, 1941, 312 U.S. 552,  
61 S.Ct. 719, 85 L.Ed. 1037. . . . . 26
25. HOVEY V ELLIOTT, 1897, 167 U.S. 409,  
17 S.Ct. 841, 42 L.Ed. 215. . . . . 25, 26
26. IN RE BRITFITHS, 1973, 413 U.S. 717, 634.  
93 S.Ct. 2851, 2861, 37 L.Ed. 2d 910, 853. . . 8
27. JENKINS V UNITED GAS CORPORATION,  
400 F.2d 28, CA 5 1968. . . . . 27



28. LA CHEMISE LACOSTE V ALLIGATOR COMPANY,  
60 F.R.D. 164, DC DE 1973. . . . . 15
29. LINK V WABASH RAILROAD COMPANY 1962.  
370 U.S. 626, 82 S.Ct. 1386, 8 L.Ed.2d 734. . . 19, 22
30. McDONNELL DOUGLAS CORPORATION V GREEN,  
1973, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668. . 13, 14
31. MEEKER V RILEY, 324 F.2d 269, CA 10 1963. . 20
32. MONTECATINI EDISON S.P.A. V E.I. DU PONT  
DE NEMOURS & COMPANY, 434 F.2d 70,  
CA 3 1970. . . . . 17
33. NAVARRO V CHIEF OF POLICE, DES MOINES,  
IOWA, 523 F.2d 214, CA 8 1975. . . . . 20
34. NEUMANN V PIGGIE PARK ENTERPRISES, 1968.  
390 U.S. 400, 88 S.Ct. 964, 19 L.Ed.2d 1263. . . 9
35. POND V BRANIFF AIRWAYS, 453 F.2d 347,  
CA 5 1972. . . . . 22
36. REDFIELD V YSTALYFERA IRON COMPANY,  
1884, 110 U.S. 174, 5 S.Ct. 570, 28 L.Ed. 109. . 23
37. REIZAKIS V LOY, 490 F.2d 1132, CA 4 1974. . 22
38. RICHMAN V GENERAL MOTORS CORPORATION,



	437 F.2d 146, CA 1 1971. . . . .	20, 22
39.	RODRIGUEZ V EAST TEXAS MOTOR FREIGHT SOS F.2d 40, CA 5 1974. . . . .	15
40.	SAYRE V ABRAHAM LINCOLN FEDERAL SAVINGS & LOAN ASSOCIATION, 65 F.R.D. 379, ED PA 1974. . . . .	15
41.	SEARVER V ALLEN, 457 F.2d 308, CA 7 1972. .	20
42.	SOCIETE INTERNATIONALE V ROGERS, 1958, 357 U.S. 197, 78 S.Ct. 1087, 2 L.Ed.2d 1255. . .	25
43.	SOUTHERN RAILWAY COMPANY V LANHAM, 403 F.2d 119, CA 5 1968. . . . .	15, 17
44.	SUROWITZ V HILTON HOTELS CORPORATION, 1966, 383 U.S. 363, 86 S.Ct. 845, 15 L.Ed. 807. . .	26
45.	TABATCHNIK V G.D. SEARCE & COMPANY, 67 F.R.D. 49, DC NJ 1975. . . . .	14
46.	UNITED STATES V HAYES INTERNATIONAL CORPORATION, 456 F.2d 112, CA 5 1972. . .	15
47.	UNITED STATES V INTERNATIONAL BUSINESS MACHINES CORPORATION, 66 F.R.D. 215, SD NY 1974. . . . .	15



48. UNITED STATES V NIXON. 1974. 418 U.S.

683, 94 S.Ct. 3090, 41 L.Ed. 2d 1039. . . . 15.18

49. VINDICNI V MEYER. 441 F.2d 376, 2d 2 1971. . 19



TABLE OF STATUTES AND RULES

8	USCA 1153 (a)(3) . . . . .	2
18	USCA 1623 . . . . .	7
42	USCA 1981 . . . . .	4
42	USCA 20002 of 246 . . . . .	3
RULE 1,	F.R.CIV.P. . . . .	26
RULE 26 (b)(1),	F.R.CIV.P. . . . .	14
RULE 33(a),	F.R.CIV.P. . . . .	4
RULE 37 (a),	F.R.CIV.P. . . . .	5
RULE 41 (b),	F.R.CIV.P. . . . .	5, 19



### ISSUES PRESENTED

1. WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING "COMPETENT EVIDENCE" TO THE PLAINTIFF-APPELLANT THROUGH DISCOVERY IN ORDER FOR HIM TO ESTABLISH A PRIMA FACIE CASE OF EMPLOYMENT DISCRIMINATION.
2. WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN DISMISSING THE COMPLAINT FOR LACK OF PROSECUTION, WHEN THE PLAINTIFF-APPELLANT HAS BEEN PROSECUTING IT VIGOROUSLY.



STATEMENT OF FACTS

THE APPELLANT WAS BORN IN INDIA, OF INDIAN PARENTAGE. HE HOLDS A BACHELOR'S DEGREE IN ELECTRICAL ENGINEERING FROM THE UNIVERSITY OF CALCUTTA. HE IMMIGRATED TO THIS GREAT COUNTRY ON MAY 31, 1969.

PRIOR TO COMING TO THE UNITED STATES, HE HAD GAINED TWO YEARS OF EXPERIENCE IN COMPUTER SOFTWARE WITH TWO REPUTABLE COMPUTER MANUFACTURERS IN ENGLAND. HE WAS ADMITTED TO THIS COUNTRY AS AN ALIEN WHO IS A MEMBER OF A PROFESSION FOR WHICH THERE IS AN AVAILABLE MARKET FOR HIS PROFESSIONAL SERVICES 8 USC 1153(0)(3).

EVER SINCE THE APPELLANT LANDED IN THE LAND OF OPPORTUNITY, HE HAS BEEN LOOKING FOR A JOB.

THE APPELLANT FILED CHARGES OF DISCRIMINATION WITH THE EQUAL EMPLOYMENT



OPPORTUNITY COMMISSION (EEOC). ON FEBRUARY 22, 1972, CHARGING THE APPELLEE, INFORMATICS INCORPORATED, WITH DISCRIMINATION AGAINST HIM BECAUSE OF HIS NATIONAL ORIGIN. THE EEOC ISSUED A NO-CAUSE DETERMINATION ON FEBRUARY 25, 1975. THE SAID DETERMINATION, ALONG WITH THE NOTICE OF RIGHT-TO-SUE INFORMATICS, WAS RECEIVED BY THE APPELLANT ON MARCH 25, 1975.

ON JUNE 11, 1975, THE APPELLANT COMMENCED THE INSTANT ACTION AGAINST THE APPELLEES BY FILING A COMPLAINT AT THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK. IN THE COMPLAINT THE APPELLANT CHARGED THAT THE APPELLEES DENIED HIM EQUAL EMPLOYMENT OPPORTUNITIES AS PROVIDED BY TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED BY THE EQUAL EMPLOYMENT OPPORTUNITY ACT OF 1972, 42 USC 20002 et. seq. AS



WELL AS THE CIVIL RIGHTS ACT OF 1966,  
AS AMENDED BY THE ENFORCEMENT ACT OF  
1970, 42 USCA 1981, BASED ON ITS FAILURE  
OR REFUSAL TO HIRE HIM AS A PROGRAMMER-  
ANALYST BECAUSE OF HIS COLOR, RELIGION,  
NATIONAL ORIGIN, AND ALIENAGE.

THE APPELLEES, THEN, BY THEIR ATTORNEY  
DEPOSED THE APPELLANT, PURSUANT TO THE  
FEDERAL RULES OF CIVIL PROCEDURE, AND  
FILED THE DEPOSITION WITH THE CLERK OF  
THE COURT ON FEBRUARY 17, 1976.

IN THE INTERIM, ON JULY 18, 1975, THE  
APPELLANT SERVED A SET OF EIGHT INTERRO-  
GATORIES, PURSUANT TO RULE 33(a) OF THE  
F.R.CIV.P., ON THE COUNSEL FOR THE  
APPELLEES. THE APPELLEES ANSWERED NOS.  
1, 2, 3, 6 & 7, AND OBJECTED TO NOS. 4, 5 & 8.  
ON GROUNDS OF BURDENSOMENESS AND  
OPPRESSIVENESS.

THE APPELLANT, ON SEPTEMBER 8, 1975,



MADE A MOTION, PURSUANT TO RULE 37(a) OF THE F.R.CIV.P., TO COMPEL THE APPELLEE TO ANSWER INTERROGATORIES 4, 5 & 8, ON THE GROUND THAT FAILURE TO ANSWER THEM WERE WITHOUT SUBSTANTIAL JUSTIFICATION. THE SAID MOTION WAS DENIED BY THE TRIAL COURT ON OCTOBER 10, 1975.

ON FEBRUARY 10, 1976, THE TRIAL COURT DISMISSED THE COMPLAINT, PURSUANT TO RULE 41(b) OF THE F.R.CIV.P., ON THE GROUND THAT THE APPELLANT FAILED TO PROCEED TO TRIAL BECAUSE OF INCOMPLETION OF PRE-TRIAL DISCOVERY.



## ARGUMENT

THE APPELLANT HOLDS A B.S. DEGREE IN ELECTRICAL ENGINEERING, AND HE IS ESPECIALLY STRONG IN MATHEMATICS. HE GOT ADMISSION AT THE NEW YORK UNIVERSITY IN 1970 TOWARDS A MASTER'S DEGREE IN BUSINESS ADMINISTRATION. HAD HE HAD A JOB, HE WOULD HAVE LONG COMPLETED HIS MBA. THEREFORE, HIS ACADEMIC TRAINING PERFECTLY MATCHES THE APPELLEES' REQUIREMENTS (EXHIBIT K).

THE TIME THE APPELLANT CAME TO THE LAND OF OPPORTUNITY, HE HAD TWO YEARS' OF EXPERIENCE IN WRITING DIAGNOSTIC PROGRAMS FOR TWO OF THE FIVE LARGEST COMPUTER MANUFACTURERS OF THE WORLD. HE WAS, AT THAT TIME, FAMILIAR WITH SOME ASPECTS OF THE APPELLEES' BUSINESS (EXHIBITS E, F, G, H, J, L & M).

THE APPELLANT'S ACADEMIC TRAINING



AND PROFESSIONAL EXPERIENCE ARE, THEREFORE COMPLETELY IN AGREEMENT WITH THE APPELLEES' JOB REQUIREMENTS. INSPITE OF SUCH QUALIFICATIONS, HE HAS NEVER BEEN CONSIDERED FOR A JOB, EVEN AFTER RESPONDING TO THE APPELLEES' EMPLOYMENT ADVERTISEMENTS REPEATEDLY. COMPLAINT, PAGES 2, 3, 4 & 5, PARA 6. THE APPELLEES CONTENTED, HOWEVER, THAT THE PROGRAMMERS AND ANALYSTS INTERVIEWED OVER THE LAST SEVEN YEARS, WHETHER HIRED OR NOT, POSSESSED QUALIFICATIONS SUPERIOR TO THOSE OF THE APPELLANT.

IN HIS INTERROGATORY THE APPELLANT ASKED FOR THE NUMBER OF PROGRAMMERS AND ANALYSTS EMPLOYED BY THE APPELLEES. THE ATTORNEY FOR THE APPELLEES, WERNER WEINSTOCK, KNOWINGLY GAVE A FALSE FIGURE WHICH HE KNEW TO HAVE BEEN FALSE. 18 USCA 1623. HE STATED THAT THE APPELLEES EMPLOY ONLY SIXTY PROGRAMMERS



AND ANALYSTS. ANSWERS TO INTERROGATORIES,  
DATED AUGUST 26, 1975. FAR AWAY FROM  
THE TRUTH.

AS OF OCTOBER 1973, INFORMATICS ALONE  
HAD 498 SOFTWARE PROFESSIONALS ON ITS  
PAYROLL (EXHIBIT K). ADDED TOGETHER  
WITH SUCH EMPLOYEES OF EQUIMATICS, PLUS  
CONSIDERING THE GROWTH OF THE COMBINED  
COMPANY FROM OCTOBER 1973 TO AUGUST 1975,  
THE TOTAL NUMBER OF PROGRAMMERS AND  
ANALYSTS EMPLOYED BY THE APPELLEES WOULD  
HAVE BEEN APPROXIMATELY 600, BY AUGUST 1975.

IT IS TRUE THAT "SOMETHING MORE THAN  
TECHNICAL SKILLS ARE NEEDED TO BE A LAWYER  
UNDER [AMERICAN] SYSTEM." IN RE GRIFFITHS,  
1973, 413 U.S. 717, 634, 663, 93 S. CT. 2851, 2861,  
2868 (REHNQUIST, J., DISSENTING). BUT THE  
SKILLS ACQUIRED BY WERNER WEINSTOCK,  
THOUGH PROTECT "THE [WRONG]FUL INTERESTS  
OF HIS CLIENTS" HICKMAN V TAYLOR, 1967,



329 U.S. 495, 510, 67 S.Ct. 385, 393, DOES NOT  
"WORK FOR THE ADVANCEMENT OF JUSTICE." IS.  
INDEED, THIS PERJURY ITSELF IS A TACIT  
ADMISSION THAT THE VAST MAJORITY OF THE  
APPELLEES' PROGRAMMERS AND ANALYSTS ARE  
LESS QUALIFIED THAN THAT OF THE APPELLANT.

IN THESE CIRCUMSTANCES, IT IS IMPERATIVE  
THAT THE APPELLANT BE GIVEN A FULL AND  
FAIR OPPORTUNITY TO AVAIL OF HIS GUARANTEED  
RIGHT IN A COURT OF LAW, NOT ONLY TO  
REDRESS HIS OWN INJURY, BUT ALSO TO  
VINDICATE "A POLICY THAT CONGRESS CONSIDERED  
OF THE HIGHEST PRIORITY." NEWMAN V PICCIE  
PARK ENTERPRISES, 1968, 390 U.S. 400, 402,  
88 S.Ct. 964, 966.



POINT I      OPEN DISCLOSURE OF ALL POTENTIALLY  
RELEVANT INFORMATION IN THE  
ADVERSARY SYSTEM OF JUSTICE IS  
BOTH FUNDAMENTAL AND COMPREHENSIVE

CONGRESS ENACTED TITLE VII OF THE  
CIVIL RIGHTS ACT OF 1964 "TO ACHIEVE  
EQUALITY OF EMPLOYMENT OPPORTUNITIES AND  
REMOVE BARRIERS THAT HAVE OPERATED IN THE  
PAST TO FAVOR AN IDENTIFIABLE GROUP OF  
WHITE [APPLICANTS] OVER OTHER [APPLICANTS  
FOR EMPLOYMENT]." GRIGGS V DUKE POWER  
COMPANY, 1971, 401 U.S. 424, 429-30, 91 S.Ct. 849, 853.

HOWEVER, "THE ACT DOES NOT COMMAND  
THAT ANY PERSON BE HIRED SIMPLY BECAUSE  
HE . . . IS A MEMBER OF A MINORITY GROUP."  
ID., 401 U.S. at 430-1, 91 S.Ct. at 853.

"INDEED, THE VERY PURPOSE OF TITLE VII  
IS TO PROMOTE HIRING ON THE BASIS OF JOB  
QUALIFICATIONS, RATHER THAN ON THE BASIS



OF [COLOR, OR RELIGION, OR NATIONAL ORIGIN]."  
ID. , 401 U.S. at 434, 91 S.Ct. at 855.

THE INTERROGATORIES PROPOUNDED BY THE APPELLANT PRIMARILY CALL FOR THE QUALIFICATIONS OF THE PROGRAMMERS AND ANALYSTS HIRED BY THE APPELLEES OVER THE LAST SEVEN YEARS.

THE APPELLEES OBJECTED TO THOSE INTERROGATORIES ON THE GROUNDS OF BURDENSOMENESS AND OPPRESSIVENESS. ANSWERS TO INTERROGATORIES, DATED AUGUST 26, 1975. AND THE TRIAL COURT SUSTAINED THOSE OBJECTIONS.

IT IS WELL-ESTABLISHED THAT A LAWSUIT IS NOT A CONTEST IN CONCEALMENT, AND THAT THE DISCOVERY PROCESS WAS ESTABLISHED SO THAT "EITHER PARTY MAY COMPEL THE OTHER TO DISCLOSE WHATEVER FACTS HE HAS IN HIS POSSESSION." HICKMAN V TAYLOR, SUPRA, 329 U.S. at 507, 67 S.Ct. at 392.

THE BROAD SCOPE OF DISCOVERY AS



ARTICULATED IN THE TEXT IS ALSO REFLECTED IN AN OPINION BY JUDGE LEAHY SHORTLY AFTER THE ADOPTION OF THE FEDERAL RULES OF CIVIL PROCEDURE :

"UNLESS IT IS PALPABLE THAT THE EVIDENCE SOUGHT CAN HAVE NO POSSIBLE BEARING UPON THE ISSUES, THE SPIRIT OF THE NEW RULES CALLS FOR EVERY RELEVANT FACT, HOWEVER REMOTE, TO BE BROUGHT OUT FOR THE INSPECTION NOT ONLY OF THE OPPOSING PARTY BUT FOR THE BENEFIT OF THE COURT WHICH IN DUE COURSE CAN ELIMINATE THOSE FACTS WHICH ARE NOT TO BE CONSIDERED IN DETERMINING THE ULTIMATE ISSUES." HERCULES POWDER COMPANY V ROHM & HAAS COMPANY, 3 F.R.D. 302, 306, DC DE 1943.

MOREOVER, THE SUPREME COURT MADE IT CLEAR THAT THE "DISCOVERY RULES ARE TO BE ACCORDED A BROAD AND LIBERAL



TREATMENT," AND THAT "MUTUAL KNOWLEDGE OF ALL THE RELEVANT FACTS GATHERED BY BOTH PARTIES IS ESSENTIAL TO PROPER LITIGATION." HICKMAN V TAYLOR, 329 U.S. at 507, 67 S.Ct. at 392.

BESIDES, "CIVIL TRIALS IN THE FEDERAL COURTS NO LONGER NEED BE CARRIED ON IN THE DARK." ID., 329 U.S. at 501, 67 S.Ct. at 389. THEREFORE, THE SUPREME COURT MANDATED THAT "ON ... [TRIAL] [THE APPELLANT] MUST BE GIVEN A FULL AND FAIR OPPORTUNITY TO DEMONSTRATE BY COMPETENT EVIDENCE THAT THE PRESUMPTIVELY VALID REASONS FOR HIS REJECTION WERE IN FACT A COVERUP FOR A ... DISCRIMINATORY DECISION." McDONNELL DOUGLAS CORPORATION V GREEN, 1973, 411 U.S. 792, 805, 93 S.Ct. 1817, 1826.

THE SUPREME COURT HAS ALSO GIVEN CLEAR GUIDELINES ON THE COMPETENT EVIDENCE ESSENTIAL TO A JOB-BIAS COMPLAINANT TO



ESTABLISH A PRIMA FACIE CASE :

"STATISTICS AS TO [THE APPELLEES'] EMPLOYMENT POLICY AND PRACTICE MAY BE HELPFUL TO A DETERMINATION OF WHETHER [THE APPELLEES] REFUSAL TO [HIRE] [THE APPELLANT] . . . CONFORMED TO A GENERAL PATTERN OF DISCRIMINATION AGAINST [MINORITIES]." 10, 411 U.S. at 805, 93 S.Ct. at 1825.

THE INFORMATION SOUGHT BY THE APPELLANT THROUGH INTERROGATORIES CALLS FOR THE STATISTICS AS TO THE APPELLEES' EMPLOYMENT POLICY AND PRACTICE. FAR FROM BEING BURDENSOME AND OPPRESSIVE, THE INTERROGATORIES ARE ENTIRELY "RELEVANT TO THE SUBJECT MATTER INVOLVED IN THE PENDING ACTION," AND THAT "THE INFORMATION SOUGHT APPEARS REASONABLY CALCULATED TO LEAD TO THE DISCOVERY OF ADMISSIBLE EVIDENCE." RULE 26(b)(1), FEDERAL RULES OF CIVIL PROCEDURE. SEE ALSO TARATCHNICK



V. G. D. SEARLE & COMPANY, 67 F.R.D. 49, 54,  
DE NJ 1975; UNITED STATES V IBM  
CORPORATION, 66 F.R.D. 215, 218, SD NY 1974;  
SAYRE V ABRAHAM LINCOLN FEDERAL SAVINGS  
& LOAN ASSOCIATION, 65 F.R.D. 379, 382, ED  
PA 1974; LA CHEMEISE LACOSTE V ALLIGATOR  
COMPANY, 60 F.R.D. 164, 171, DE DE 1973; FRANKS  
V NATIONAL DAIRY PRODUCTS CORPORATION, 41  
F.R.D. 234, 238, WD TX 1966; RODRIGUEZ V  
EAST TEXAS MOTOR FREIGHT, 505 F.2D 40, 53,  
CA 5 1974; UNITED STATES V HAYES  
INTERNATIONAL CORPORATION, 456 F.2D 112, 120,  
CA 5 1972; SOUTHERN RAILWAY COMPANY V  
LANHAM, 403 F.2D 119, 129, CA 5 1968.

THE COURT SHOULD BEAR IN MIND THAT  
"THE NEED TO DEVELOP ALL RELEVANT FACTS  
IN THE ADVERSARY SYSTEM IS BOTH FUNDAMENTAL  
AND COMPREHENSIVE." UNITED STATES V NIXON,  
1974, 418 U.S. 683, 709, 94 S.Ct. 3090, 3108.

IN ADDITION, "THE EXPERIENCE OF THE



FEDERAL COURTS OVER THE LAST TWO DECADES HAS BEEN THAT . . . DISCRIMINATION IN EMPLOYMENT . . . IS OFTEN SUBTLE AND NOT EASILY PROVED. THE CONSEQUENCES OF SUCH DISCRIMINATION ARE MOST GRAVE, BOTH FOR THE INDIVIDUAL VICTIM AND FOR SOCIETY AT LARGE." BOOTH V PRINCE GEORGE'S COUNTY, MARYLAND, 66 F.R.D. 466, 473, DC MD 1975.

THEREFORE, THE NECESSITY FOR LIBERAL DISCOVERY TO CLARIFY THE COMPLEX ISSUES ENCOUNTERED IN LITIGATION SEEKING TO REDRESS EMPLOYMENT DISCRIMINATION HAS BEEN WIDELY RECOGNIZED. BURNS V THIOKOL CHEMICAL CORPORATION, 483 F.2D 300, CA 5 1973.

IT IS A WELL-ESTABLISHED DOCTRINE THAT THE SCOPE AND CONDUCT OF DISCOVERY ARE WITHIN THE SOUND DISCRETION OF THE TRIAL JUDGE. BAKER V F&F INVESTMENT, 470 F.2D 778, 781, CA 2 1972, CERT DEN. 1973,



411 U.S. 966, 93 S.Ct. 2147; MONTGOMERY EDISON  
S.P.A. V E.I. DU PONT DE NEMOURS & COMPANY,  
434 F.2D 70, 72, CA 3 1970; SOUTHERN RAILWAY  
COMPANY V LANHAM, 403 F.2D 119, 126 CA 5 1968;  
BANK OF AMERICA NATIONAL TRUST AND SAVINGS  
ASSOCIATION V HAYDEN, 231 F.2D 595, 606, CA 9  
1956; ATLANTIC GREYHOUND CORPORATION V  
LAURITZEN, 182 F.2D 540, 542, CA 6 1950; CARTER  
V BALTIMORE & O.R. COMPANY, 152 F.2D 129, 130-1,  
CA DC 1945.

"BUT THE JUDGE'S DISCOVERY RULINGS,  
LIKE HIS OTHER PROCEDURAL DETERMINATIONS,  
ARE NOT ENTIRELY SACROSANCT. IF HE FAILS  
TO ADHERE TO THE LIBERAL SPIRIT OF THE  
RULES, [THE APPELLATE COURT] MUST REVERSE"  
BURNS V THIOKOL CHEMICAL CORPORATION,  
483 F.2D 300, 305, CA 5 1973.

THE COURT SHOULD EVER BE MINDFUL  
THAT "THE VERY INTEGRITY OF THE JUDICIAL  
SYSTEM AND PUBLIC CONFIDENCE IN THE



SYSTEM DEPEND ON FULL DISCLOSURE OF ALL  
THE FACTS, WITHIN THE FRAMEWORK OF THE  
RULES OF EVIDENCE." UNITED STATES V NIXON,  
OUTRAGE, 418 U.S. at 709, 94 S.Ct. at 3108.

AS SUCH IT IS APPARENT THAT THE  
COURT BELOW ABUSED ITS DISCRETION IN  
DENYING THE APPELLANT HIS MOTION TO  
COMPEL THE APPELLEE TO ANSWER CERTAIN  
INTERROGATORIES, AND THAT THE SAID  
DECISION SHOULD BE REVERSED.



POINT II DISMISSAL OF THE COMPLAINT FOR  
LACK OF PROSECUTION WHEN THE  
PLAINTIFF HAS BEEN PROSECUTING IT  
VIGOROUSLY IS NOTHING BUT JUDICIAL  
USURPATION AND OPPRESSION AND CAN  
NEVER BE UPHOLD WHERE JUSTICE  
IS JUSTLY ADMINISTERED

IT IS WELL ESTABLISHED THAT, UNDER  
RULE 41(b) OF THE FEDERAL RULES OF CIVIL  
PROCEDURE, THE TRIAL COURT HAS THE  
DISCRETION TO DISMISS A COMPLAINT, WITH  
PREJUDICE, FOR FAILURE TO PROSECUTE.  
LINK V WABASH RAILROAD COMPANY, 1962,  
370 U.S. 628, 629, 82 S.Ct. 1386, 1389; FLAKSA  
V LITTLE RIVER MARINE CONSTRUCTION COMPANY,  
389 F.2d 885, 2A 5 1968, 22 RT. DEN. 1968,  
392 U.S. 928, 88 S.Ct. 2287; VINDIGNI V MEYER,  
441 F.2d 376, 2A 2 1971.

BUT DISMISSAL IS A HARSH SANCTION,



AND SHOULD BE RESORTED TO ONLY IN  
EXTREME SITUATIONS. NAVARRO V CHIEF OF  
POLICE, DES MOINES, IOWA, 523 F.2D 214, 217,  
CA 8 1975; SEARVER V ALLEN, 459 F.2D 308,  
310, CA 7 1972; RICHMAN V GENERAL MOTORS  
CORPORATION, 437 F.2D 196, 199, - CA 1 1971;  
MEEKER V RIZLEY, 324 F.2D 269, 272, CA 10 1963.

COURTS INTERPRETING THE RULE UNIFORMLY  
HOLD THAT IT CANNOT BE AUTOMATICALLY OR  
MECHANICALLY APPLIED. AGAINST THE POWER  
TO PREVENT DELAYS MUST BE WEIGHED THE  
SOUND PUBLIC POLICY OF DECIDING CASES  
ON THEIR MERITS. DYOTHERM CORPORATION V  
TURBO MACHINE COMPANY, 392 F.2D 146, 149,  
CA 3 1968; DAVIS V OPERATION AMIGO, 378  
F.2D 101, 103, CA 10 1967; COUNCIL OF  
FEDERATED ORGANIZATIONS V MIZE, 339 F.2D  
898, 901, CA 5 1964.

CONSEQUENTLY, DISMISSAL "MUST BE  
TEMPERED BY A CAREFUL EXERCISE OF JUDICIAL

DISCRETION," DUGGIN V GRAHAM, 372 F.2S  
130, 131, CA 5 1967.

WHILE THE PROPRIETY OF DISMISSAL  
ULTIMATELY TURNS ON THE FACTS ON EACH  
CASE, CRITERIA FOR JUDGING WHETHER THE  
DISCRETION OF THE TRIAL COURT HAS BEEN  
SOUNDLY EXERCISED HAVE BEEN STATED FREQUENTLY  
CONNOLLY V PAPACHRISTID SHIPPING LIMITED,  
504 F.2S 917, 920, CA 5 1974; BUSH V UNITED  
STATES POSTAL SERVICE, 496 F.2S 42, 44, CA 6 1974.

IT HAS BEEN OBSERVED THAT WHILE  
DISMISSAL IS A DISCRETIONARY MATTER, THE  
DECIDED CASES "HAVE GENERALLY PERMITTED  
IT ONLY IN THE FACE OF A CLEAR RECORD  
OF DELAY OR CONTUMACIOUS CONDUCT BY  
THE PLAINTIFF." DURHAM V FLORIDA EAST  
COAST RAILWAY COMPANY, 385 F.2S 366, 368,  
CA 5 1967.

THE APPELLATE COURTS FREQUENTLY HAVE  
FOUND ABUSE OF DISCRETION WHEN TRIAL



COURTS FAILED TO APPLY SANCTIONS LESS SEVERE THAN DISMISSAL. REIZAKIS V LOY, 490 F.2D 1132, CA 4 1974; POND V BRANIFF AIRWAYS, 453 F.2D 347, CA 5 1972; RICHMAN V GENERAL MOTORS CORPORATION, 437 F.2D 196, CA 1 1971; BROWN V THOMPSON, 430 F.2D 1214, CA 5 1970.

ALSO, LACK OF PREJUDICE TO THE DEFENDANT, THOUGH NOT A BAR TO DISMISSAL, IS A FACTOR THAT SHOULD BE CONSIDERED IN DETERMINING WHETHER THE TRIAL COURT EXERCISED SOUND DISCRETION. BROWN V O'LEARY, 512 F.2D 485, 486, CA 5 1975; BUSH V UNITED STATES POSTAL SERVICE, 496 F.2D 42, 44, CA 4 1974.

IF THE FACTS DO DEPICT THAT THE PLAINTIFF "HAD BEEN DELIBERATELY PROCEEDING IN DILATORY FASHION," LINK V WABASH RAILROAD COMPANY, 214 F. 370 U.S. 41 633, 82 S.Ct. 41 1390, THE DELAY WOULD CERTAINLY HAVE JUSTIFIED THE COURT IN DISMISSING



THE ACTION ON ITS OWN MOTION." REDFIELD  
V YSTALYFEER IRON COMPANY, 1884, 110 U.S.  
174, 176, 3 S.Ct. 570, 576.

IN THE INSTANT ACTION, THE PLAINTIFF-  
APPELLANT HAS BEEN VIGOROUSLY PROSECUTING  
HIS CLAIM THROUGHOUT. HE COMMENCED THE  
ACTION ON JUNE 11, 1975. THEREAFTER, IN AN  
EFFORT TO AMASS STATISTICAL EVIDENCE, AND  
DEFINE THE CONTOURS OF HIS CASE, THE  
APPELLANT PROPOUNDED INTERROGATORIES TO  
THE APPELLEES. THE APPELLEES, IN LARGE  
PART, DECLINED TO ANSWER THE INTERROGATORIES  
ON THE GROUNDS OF BURDENSOMENESS AND  
OPPRESSIVENESS. THE APPELLANT THEN MOVED  
TO COMPEL THE APPELLEES TO ANSWER THE  
INTERROGATORIES. THE SAID MOTION WAS  
DENIED BY THE TRIAL COURT ON OCTOBER  
10, 1975. AND ON FEBRUARY 10, 1976, THE  
TRIAL COURT DISMISSED THE ACTION FOR  
LACK OF PROSECUTION.



THIS UTTERLY ARBITRARY, CAPRICIOUS,  
AND WHIMSICAL ACTION OF THE TRIAL  
JUDGE IS NOTHING BUT "JUDICIAL USURPATION  
AND OPPRESSION, AND NEVER CAN BE  
UPHELD WHERE JUSTICE IS JUSTLY  
ADMINISTERED." GALPIN V PAGE, 1873, 85  
U.S. (18 WALLACE) 350, 369.

THE JUDGE SHOULD BEAR IN MIND  
THAT "THE FUNDAMENTAL CONCEPTION OF A  
COURT OF JUSTICE IS CONDEMNATION ONLY  
AFTER HEARING. TO SAY THAT COURTS HAVE  
INHERENT POWER TO DENY ALL RIGHT TO  
[PROSECUTE] AN ACTION, AND TO RENDER  
DECREE WITHOUT ANY HEARING WHATSOEVER,  
IS, IN THE VERY NATURE OF THINGS, TO  
CONVERT THE COURT EXERCISING SUCH AN  
AUTHORITY INTO AN INSTRUMENT OF WRONG  
AND OPPRESSION, AND HENCE TO STRIP IT  
OF THAT ATTRIBUTE OF JUSTICE UPON WHICH  
THE EXERCISE OF JUDICIAL POWER NECESSARILY



DEPENDS." HOWEY V ELLIOTT, 1897, 167 U.S.  
409, 413-4, 17 S.Ct. 841, 843.

"IF SUCH AUTHORITY [TO DISMISS AN ACTION]  
EXISTS, THEN, IN CONSEQUENCE OF THEIR  
ESTABLISHMENT, TO COMPEL OBEDIENCE TO  
LAW, AND TO ENFORCE JUSTICE, COURTS  
POSSESS THE RIGHT TO INFLICT THE VERY  
WRONGS WHICH THEY WERE CREATED TO  
PREVENT." ID., 167 U.S. AT 418, 17 S.Ct. AT 844.

MOREOVER, "THERE ARE CONSTITUTIONAL  
LIMITATIONS UPON THE POWER OF COURTS, EVEN  
IN AID OF THEIR OWN VALID PROGRESSES,  
TO DISMISS AN ACTION WITHOUT AFFORDING  
A PARTY THE OPPORTUNITY FOR A HEARING  
ON THE MERITS OF HIS CAUSE." SOCIETE  
INTERNATIONALE V ROGERS, 1958, 357 U.S. 197,  
209, 78 S.Ct. 1087, 1094.

SUCH ADMINISTRATION OF INJUSTICE  
"WOULD CONVERT THE JUDICIAL DEPARTMENT OF  
THE GOVERNMENT INTO AN ENGINE OF OPPRESSION,



AND WOULD MAKE IT DESTROY GREAT CONSTITUTIONAL SAFEGUARDS." HOWEY V ELLIOTT, SUPRA, 167 U.S. at 419, 17 S.Ct. at 845.

THE COURT SHOULD EVER BE MINDFUL THAT THE "RULES OF PRACTICE AND PROCEDURE ARE DEvised TO PROMOTE THE ENDS OF JUSTICE, NOT TO DEFEAT THEM." HORNEL V HELVERING, 1941, 312 U.S. 552, 557, 61 S.Ct. 719, 721.

INDEED, THE VERY FIRST RULE OF THE FEDERAL RULES OF CIVIL PROCEDURE DIRECTS THE COURTS TO CONSTRUe THOSE RULES "TO SECURE THE JUST, SPEEDY, AND INEXPENSIVE DETERMINATION OF EVERY ACTION."

"IF RULES OF PROCEDURE WORK AS THEY SHOULD IN AN HONEST AND FAIR JUDICIAL SYSTEM, THEY NOT ONLY PERMIT, BUT SHOULD AS NEARLY AS POSSIBLE GUARANTEE THAT BONA FIDE COMPLAINTS BE CARRIED TO AN ADJUDICATION ON THE MERITS." SUROWITZ V HILTON HOTELS CORPORATION, 1966, 383 U.S. 363,



373, 86 S.Ct. 545, 851.

IT IS UNIVERSALLY RECOGNIZED THAT  
"WHETHER IN NAME OR NOT, THE SUIT IS  
PERFORCE A SORT OF CLASS ACTION FOR  
FELLOW [PERSONS] SIMILARLY SITUATED."  
JENKINS V UNITED GAS CORPORATION, 400  
F. 2d 28,33, CA 5 1968.

THEREFORE, "THE TRIAL COURT BEARS  
A SPECIAL RESPONSIBILITY IN THE PUBLIC  
INTEREST TO RESOLVE THE DISPUTE BY  
DETERMINING THE FACTS REGARDLESS OF  
THE POSITION OF THE INDIVIDUAL PLAINTIFF."  
BOWE V COLGATE-PALMOLIVE COMPANY, 416  
F. 2d 711,715, CA 7 1969.

"CONGRESS, IN ENACTING TITLE VII, THOUGHT  
IT NECESSARY TO PROVIDE A JUDICIAL FORUM  
FOR THE ULTIMATE RESOLUTION OF DISCRIMINA-  
TORY EMPLOYMENT CLAIMS. IT IS THE DUTY  
OF COURTS TO ASSURE THE FULL AVAILABILITY  
OF THIS FORUM." ALEXANDER V GORDNER



DENVER COMPANY. 1974, 413 U.S. 36.60, 94  
S.Ct. 1011, 1025.

AS SUCH IT IS APPARENT THAT THE  
COURT BELOW ABUSED ITS DISCRETION IN  
DISMISSING THE COMPLAINT FOR LACK OF  
PROSECUTION WHILE THE APPELLANT HAS  
BEEN PROSECUTING IT VIGOROUSLY, AND THAT  
THE SAID DECISION SHOULD BE REVERSED.



CONCLUSION

THE JUDGMENT APPEALED FROM SHOULD  
IN ALL RESPECTS BE REVERSED.

RESPECTFULLY SUBMITTED,

Biswanath Halder

Appellant Pro Se

BISWANATH HALDER

173-17 65 AVENUE

FRESH MEADOWS, NY 11365

TELEPHONE : 212-539-2305

DATED : Bureau, New York

JUNE 11, 1976

# informatics inc



21050 Vanowen Street  
Canoga Park, California 91303

January 30, 1974

TO THE HOLDERS OF COMMON STOCK OF INFORMATICS, INC.

You are cordially invited to attend a Special Meeting of Stockholders to be held on February 27, 1974, at 10:00 A.M., Pacific Daylight Time, in the Angeles Room of the Valley Hilton Hotel, 15433 Ventura Boulevard, Sherman Oaks, Los Angeles, California 91403. The principal purpose of the meeting is to take action in connection with the proposed merger of Informatics, Inc., a Delaware corporation ("Informatics" or the "Company"), and Equitable Computer Corporation, a Delaware corporation ("Computer"), a wholly-owned subsidiary of Equimatics, Inc., a Delaware corporation ("Equimatics"). Equimatics was formed by Informatics and The Equitable Life Assurance Society of the United States ("The Equitable") in 1971. Equimatics is now a majority-owned subsidiary of The Equitable Life Holding Corporation, a Delaware corporation ("ELHC"), and Informatics presently has a substantial minority interest in Equimatics. ELHC is a wholly-owned subsidiary of The Equitable.

Pursuant to the proposed merger, the stockholders of Informatics would receive \$7 in cash for each share of Common Stock outstanding on the effective date of merger; upon effectiveness of the merger Informatics would become a wholly-owned subsidiary of Equimatics. It is further contemplated that, following the merger, Informatics will be merged into Equimatics and the name of Equimatics will be changed to Informatics, Inc.

The Board of Directors of Informatics believes that the proposed merger is in the best interests of the Stockholders of Informatics and that the price proposed to be paid for each share of Informatics Common Stock is fair and reasonable. In that connection your attention is directed to those portions of the Proxy Statement entitled "RECOMMENDATION OF MANAGEMENT," page 3, "PROPOSED MANAGEMENT ARRANGEMENTS UPON MERGER," page 33 and "INTERESTS OF CERTAIN DIRECTORS IN THE PROPOSED MERGER," page 36.

The affirmative vote of the holders of a majority of the outstanding Common Stock of Informatics is required for adoption of the Merger Agreement between Informatics and Computer and the transactions contemplated thereby. (Shares which are held of record or beneficially by officers and directors of Informatics will not be included in calculating the required vote although it is expected that such shares will in fact be voted for the adoption of the Merger Agreement.) You are urged to indicate your vote on the enclosed Proxy and to sign, date and return the Proxy promptly in the accompanying envelope.

Sincerely,

Walter F. Bauer  
Chairman of the Board and President

EXHIBIT "A"



## PROXY STATEMENT

### TABLE OF CONTENTS

	<u>Page</u>
Summary of Proposed Merger .....	1
Purposes of the Meeting .....	1
Reasons for the Merger .....	2
Voting .....	2
The Proposed Merger .....	3
Recommendation of Management .....	3
Summary of the Merger Agreement .....	3
Exchange of Shares for Cash .....	3
Effective Date, Conditions, Termination, Indemnification .....	4
Restrictions on Informatics Prior to the Merger .....	5
Organization After the Merger .....	5
Federal Income Tax Consequences .....	5
Dissenters' Rights .....	5
Capitalization of Informatics .....	6
Informatics, Inc. Consolidated Statement of Operations .....	7
Capitalization of Equimatics .....	11
Equimatics, Inc. Statement of Operations .....	12
Market Prices of Informatics Common Stock .....	13
Informatics .....	13
Business .....	13
Custom Services .....	14
Proprietary Software Products .....	16
Backlog .....	17
Contracts with Potential Losses .....	17
Competition .....	17
Economic Controls .....	18
Renegotiation .....	18
Prospects .....	18
Research and Development .....	18
Employee Relations .....	19
Profit Sharing Plan .....	19

# TABLE OF CONTENTS (Continued)

	<u>Page</u>
Certain Recent Developments .....	19
SDA Corporation .....	19
Parsons & Williams A. G. ....	19
Knowledge Networks International, Inc. ....	20
System Three, Inc. ....	20
Termination of Acquisition Discussions with Autocomp, Incorporated .....	20
Pending Acquisitions .....	20
Property .....	20
Management .....	21
Remuneration of Management .....	21
Management Incentive Plan .....	22
Qualified Stock Option Plan .....	22
Assumed Options .....	25
SDA Corporation Non-Qualified Stock Options .....	25
Restricted Stock Purchase Plan .....	25
Non-Qualified Stock Option Plan .....	26
Note Concerning Cancellation of Options .....	27
Legal Proceedings .....	27
Equimatics .....	28
Business .....	28
Property .....	29
Management .....	30
Litigation .....	30
Summary of Certain Provisions of the Organization Agreement .....	30
Proposed Management Arrangements Upon Merger .....	33
Cancellation of Outstanding Stock Options .....	33
Employment Agreements .....	33
Continued Employment Bonuses .....	34
Deferred Compensation .....	34
Restricted Stock of Equimatics .....	35
Interests of Certain Directors in the Proposed Merger .....	36
General Information .....	38
Index to Financial Statements .....	F-1
Exhibit A - Merger Agreement	
Exhibit B - Section 262 of the Delaware General Corporation Law	
Exhibit 1 - Informatics, Inc. Computation of Earnings (Loss) Per Common Share and Common Equivalent Share	



# informatics inc



## PROXY STATEMENT

This Statement is furnished in connection with the solicitation by the management of Informatics, Inc., a Delaware corporation, with principal offices at 21050 Vanowen Street, Canoga Park (Los Angeles), California 91303 ("Informatics" or the "Company"), of proxies for use at the Special Meeting of Stockholders of the Company to be held on February 27, 1974, at 10:00 A.M., Pacific Daylight Time, in the Angeles Room of the Valley Hilton Hotel, 15433 Ventura Boulevard, Sherman Oaks, Los Angeles, California 91403 and at any adjournment thereof. The approximate date on which this Statement and accompanying form of Proxy will first be sent to Stockholders is January 30, 1974.

## SUMMARY OF PROPOSED MERGER

As set forth more fully below, the Stockholders will be asked to approve the merger of Equitable Computer Corporation, a Delaware corporation ("Computer"), which is a wholly-owned subsidiary of Equimatics, Inc., a Delaware corporation ("Equimatics"), into the Company. The result of the merger, if it is approved by the Stockholders, will be that the holders of Informatics Common Stock will receive \$7 in cash for each share of such stock. Upon the effectiveness of the merger, the interests of the Stockholders in Informatics will terminate completely, and they will no longer be stockholders of Informatics. Furthermore, the Stockholders will not become the holders of any securities of any corporation which is involved in the merger. As stated above, they will receive only cash.

The book value of a share of Informatics Common Stock as of September 29, 1973, was \$3.51. See "INFORMATICS, INC. CONSOLIDATED STATEMENT OF OPERATIONS", page 7. Such book value does not include the proportionate interest per share which Informatics has in certain assets, such as stock of Equimatics. In this connection, see Note (K) of "INFORMATICS, INC., NOTES TO CONSOLIDATED STATEMENT OF OPERATIONS," page 10, and Note (8) of "INFORMATICS, INC., NOTES TO CONSOLIDATED FINANCIAL STATEMENTS," page F-13.

## PURPOSES OF THE MEETING

The Special Meeting of Stockholders of Informatics is to be held for the purpose of taking the actions described below in connection with the proposed merger of Computer into the Company in accordance with the Merger Agreement dated January 30, 1974, between the Company and Computer, a copy of which is attached hereto as Exhibit A. Attached to the Merger Agreement as Exhibit I thereto is a copy of the Statutory Agreement of Merger between Informatics and Computer which, following adoption, is to be filed with the Delaware Secretary of State pursuant to Delaware law. Both the Merger Agreement and the Statutory Agreement of Merger are hereinafter collectively referred to as the "Merger Agreement". Equimatics is a subsidiary of The Equitable Life Holding Corporation, a Delaware corporation ("ELHC"), which is itself a wholly-owned subsidiary of The Equitable Life Assurance Society of the United States ("The Equitable").



## NOTES (continued)

(B) Equimatics records income on its contracts for services on the percentage-of-completion method for financial statement purposes. (See Note 1(a) of Notes to Financial Statements.)

(C) Depreciation, provided on the straight-line method, deducted in the statement of operations amounted to \$15,990 and \$21,295 in the year ended December 1, 1972, and ten months ended September 30, 1973, respectively. (See Note 1(b) of Notes to Financial Statements.)

(D) Net loss per share is based on the weighted average number of shares (133,109 and 136,739 for the year ended December 1, 1972, and ten months ended September 30, 1973, respectively) of common stock outstanding during the period, assuming the conversion of Class A Stock into Class B Stock. The conversion of preferred stock and exercise of warrants to purchase common stock has been excluded from the calculation of weighted average shares outstanding since they have an anti-dilutive effect on the loss per share amount.

## MARKET PRICES OF INFORMATICS COMMON STOCK

Informatics Common Stock is traded in the over-the-counter market. The following table shows for the periods indicated the high and low bid prices as reported by the National Association of Securities Dealers (through NASDAQ, since its inception) in the Pacific Coast Edition of The Wall Street Journal:

Year	High Bid <sup>1</sup>	Low Bid <sup>1</sup>
1971 (4th Quarter)	9%	5%
1972 (1st Quarter)	10%	8
(2nd Quarter)	9 1/4	7 1/2
(3rd Quarter)	7 1/2	5 1/2
(4th Quarter)	6%	4%
1973 (1st Quarter)	5 3/4	3%
(2nd Quarter)	3%	2%
(3rd Quarter)	5 3/4	3 1/4
(4th Quarter)	5 3/4	5%
1974 (1st Quarter to January 24, 1974)	6%	5 1/4

<sup>1</sup> These bids represent inter-dealer quotations and may not represent actual transactions; they do not include retail mark-up, mark-down or commission.

On July 19, 1973, The Equitable and Informatics first announced the proposed merger upon terms that would result in an exchange of Informatics Common Stock for \$6 cash per share. On July 18 the bid price as reported in the Pacific Coast Edition of The Wall Street Journal was 3 5/8; on July 20, the day following the announcement, 4 5/8. On September 21, 1973, The Equitable and Informatics announced they had reached an agreement in principle providing for such an exchange at \$7 cash per share. On September 20 the bid price as so reported was 4, and on September 24, the first business day following the announcement, 5 1/2.

## INFORMATICS

### Business

The principal business of Informatics is software and information processing. Informatics supplies to users of electronic data processing (EDP) equipment, software services, including information processing services, and software products. As used in the EDP industry, software denotes those services and products associated with the application and use of EDP equipment other than the manufacture and sale of EDP equipment itself. There are two principal categories of software,



- (1) custom services provided under contracts tailored to the particular needs of customers, and
- (2) proprietary products.

Custom services software includes such items as analysis of customer operations and procedures, development of information requirements, consultation on the selection of EDP equipment, development of systems specifications, design and implementation of computer programs, and operation of EDP systems. A growing part of such custom services is information processing, which is the processing of information in natural language form, usually by means of an electronic computer.

There are two types of proprietary product software, (a) software products sold independently of hardware (computer equipment) and (b) software products sold as part of a system together with the hardware on which the software is used. A software product includes a set of computer programs, sufficiently general in nature to be used by many diverse customers, and all of the literature, training and support services that are necessary to use it effectively. The Company does not manufacture hardware included in such sales, but normally purchases such hardware under Original Equipment Manufacturer (OEM) agreements for resale.

Informatics' major offices are located in the metropolitan areas of Los Angeles, New York City, District of Columbia and Geneva, Switzerland. Sales offices and facilities for providing custom services are maintained in other locations, including Chicago, Dallas, Omaha, Colorado Springs, Honolulu, upstate New York, and several cities in Europe.

For each of the five fiscal years ended March 1973 the percentages of consolidated revenues and income before federal income tax and extraordinary items for custom services and proprietary products\* (excluding discontinued operations) were as follows:

	Fiscal Years Ended In March Of									
	1969		1970		1971		1972		1973	
	Custom Services	Proprietary Products	Custom Services	Proprietary Products	Custom Services	Proprietary Products**	Custom Services	Proprietary Products**	Custom Services	Proprietary Products**
Revenues .....	77%	23%	79%	21%	73%	27%	65%	35%	60%	40%
Income Before Federal Income Tax and Extraordinary Items .....	45%	55%	90%	10%	49%	51%	27%	73%	44%	56%

See "INFORMATICS, INC. CONSOLIDATED STATEMENT OF OPERATIONS," page 7.

\* Sales of computer hardware purchased by the Company for resale with software as part of a system are included in the category of proprietary products.

\*\* Sales discussed in the preceding footnote constituted 4%, 7% and 5% of consolidated revenues for the fiscal years ended in March 1971, 1972 and 1973, respectively.

#### Custom Services

Custom services include the development of an overall approach to the use of EDP equipment by the customer and usually result in the preparation of computer programs. Informatics has rendered such services to numerous customers including agencies of federal, state and local governments, EDP equipment manufacturers and commercial enterprises.

One of the principal custom services provided by Informatics is the implementation of systems for the handling of financial, administrative and reference information for government and commercial



organizations. In addition, Informatics personnel have programmed general scientific and engineering applications, principally in connection with the space programs of the National Aeronautics and Space Administration (NASA).

Since its organization, Informatics has provided software to command and control centers in the Department of Defense and to intelligence agencies of the federal government. Informatics also supplies other government agencies with software systems. Informatics is currently designing and operating management information systems which standardize reporting of nationwide operations of several other federal agencies.

Informatics has also prepared a back office and record keeping system for a major brokerage firm and an international monetary transfer processing system for one of the nation's largest banks as well as other management information systems for various commercial firms.

Informatics' NASA Facility Operations Division (NFOD) operates NASA's Scientific and Technical Information Facility at College Park, Maryland, under a cost-plus-fixed-fee plus incentive-award-fee contract amounting to approximately \$3.5 million for fiscal 1973. This facility acquires scientific and technical reports from sources throughout the world in the earth and space sciences, organizes, indexes and abstracts relevant documents, processes selected documents on microfilm for reproduction and distribution and provides a central reference service to NASA and space contractors. This contract is now in its fifth renewal year and the government has a further option to renew it for an additional year.

During fiscal 1973, Informatics also received two additional NASA facility contracts, which are a three-year contract to provide Jet Propulsion Laboratory with programming and other support services in data processing for space research and a one-year contract, renewable annually for three years with Ames Research Center, for similar assistance in aeronautical and space sciences. The expected aggregate annual revenue from these two contracts is approximately \$1.3 million.

In the area of information services, Informatics provides information processing for technical reference and support services for government libraries. The Company has developed indices and other information summaries from foreign technical documents for the Advanced Research Projects Agency (ARPA) and the U.S. Air Force.

Informatics is currently providing data base services which make available to the public and government agencies, by means of a communications system connected to a computer, scientific and bibliographic information from government libraries, files and computer data banks. This new area of business presently accounts for annual revenues of approximately \$1,000,000. In addition, Informatics is currently under contract with NASA for the development of RECON, a computer search and retrieval system; with the National Library of Medicine for TOXLINE, a computer retrieval service in toxic drugs, pesticides and environmental pollutants; and with the Environmental Protection Agency for ENVIRON, a data base service that provides on-line full text information.

In providing custom services, the Company may serve either as a prime contractor or as a subcontractor. Exclusive of NASA contracts, which accounted for 42% of custom services revenues in fiscal 1973 and 50% in fiscal 1972, approximately 26% of the balance of custom services revenues during fiscal 1973 were derived from private industry, 30% from the Department of Defense and the remaining 44% from other government agencies. The corresponding percentages during the fiscal year ended in March 1972 were 27%, 38% and 35%, respectively. Of total custom services revenues for fiscal 1973 (excluding revenues derived under NASA contracts), 25% were derived from fixed price contracts, 34% from time and materials (fixed hourly rate) contracts and 41% from cost-plus-fixed-fee contracts. The corresponding percentages for fiscal 1972 were 41%, 28% and 31%, respectively.

All of Informatics' custom services contracts with federal, state and local governments and some of its contracts with commercial customers are subject to termination without cause at the option of the customer. However, in the event of such a termination, Informatics is normally entitled to reimbursement on the basis of the cost of work done plus a profit negotiated at that time.



Informatics sells its custom services through its own marketing personnel consisting of approximately 5 persons, augmented by its officers and senior professional personnel.

#### Proprietary Software Products

The terms "proprietary products" and "packages" in the software industry denote standardized computer programs which can be used by many customers to solve a variety of problems. During recent years, Informatics has accelerated the development, implementation and marketing of its MARK IV File Management System, a proprietary product. This system reduces the programming effort required to process business data on computers by enabling properly trained employees (normally systems analysts or programmers) to use a convenient language on specifically designed forms to furnish instructions and data to the MARK IV programs. These programs instruct the computer to perform data processing functions such as changing and updating stored information, selecting and extracting pertinent data, making computations involving the extracted data, and furnishing output presented as updated computer files and as printed reports.

MARK IV is currently available for IBM System 360 computers from model 22 through model 195, and for all System 370 machines. MARK IV is also available for use on UNIVAC Series 70, 9400 and 9700 computers and Siemens 4004 computers.

Licenses to use models of varying capability of the MARK IV System are offered for sale or lease together with a number of special features which either enhance overall processing power or provide special capabilities requested by users. A new customer currently pays from \$50,000 to \$120,000 (or comparable prices in Swiss francs or Japanese yen) for his license including such special features. Discounts are available for additional installations of a single customer and for educational institutions. In addition, MARK IV is available to users who do not have a regular MARK IV license through time sharing facilities of National CSS, Inc. and Interactive Data Corporation. Users are billed on the basis of machine-resources used. To date, revenues from this source have not been material.

Informatics' proprietary products are sold by its own marketing organization which as of October 1973 totaled 60 persons in the United States and 17 persons in Europe. Computer Applications Company, an independent software firm in Japan, markets MARK IV in that country under a sales representation agreement.

Current users of MARK IV include government agencies, industrial companies, insurance companies and banks. As of November 1, 1973, a total of 687 MARK IV Systems had been installed in 37 countries.

Informatics also supplies customers with its ICS-IV Communications Switching System. ICS-IV is a combination of hardware (Xerox Sigma 5 to 9 or Digital Equipment Corporation (DEC) PDP-11 computers) and proprietary software which provides point-to-point message communication by switching messages among various units of a business enterprise and by operating as a link between terminals and data bases. Informatics markets the system under Original Equipment Manufacturer (OEM) agreements with Xerox and DEC. The price of an ICS-IV installation (including hardware not manufactured by Informatics) ranges from \$400,000 to \$3 million, of which the software amounts range from 20% to 60%. Informatics receives license fees on the software as well as revenues from the sale of hardware and services connected with the installations. The Mitsubishi Corporation has a license to market the ICS-IV in Japan and certain other Far Eastern countries for use on Mitsubishi manufactured computers. Informatics receives a royalty for each installation. To date, revenues from Mitsubishi have not been material. Informatics is currently under contract to supply a large New York City bank with one of the first large scale money transfer systems. This installation will use the ICS-IV. This ICS-IV installation will use computers supplied by DEC and will process money transfer transaction messages coming from several sources.



Informatics also acquires marketing rights to existing proprietary products and packages. In 1972, Informatics acquired exclusive U.S., Canadian and South American marketing rights to QUICK-DRAW, a proprietary software product of National Computer Analysts, Inc. QUICK-DRAW is a flowcharting system that automatically produces flowcharts, program diagnostics and cross-reference listings. Informatics has also recently acquired a general ledger package now being marketed under the name ACCOUNTING IV and a file management system being marketed as CL\*IV. CL\*IV is designed to improve the productivity of users of COBOL, a programming language used by most commercial EDP installations. Informatics has also recently acquired certain rights relating to various application packages for MARK IV customers developed by Praxa Data Centers, Inc. of Cherry Hill, New Jersey.

In November 1972, Informatics acquired rights to market and sell in the Western Hemisphere a computerized manufacturing production control system, PRODUCTION IV, first introduced in Europe in 1963, and used by manufacturers primarily in Finland, Portugal, Sweden, Denmark and the United Kingdom. PRODUCTION IV is a set of programs for installation of IBM 360 and 370 computers designed to help managers plan, operate and control various activities that are involved in manufacturing a product. Informatics P & W A.G., a Swiss corporation, which is a wholly owned subsidiary of Informatics, has acquired the operating assets of Parsons & Williams, A.G., a Swiss corporation, which holds rights to the system in the rest of the world. The acquisition is not a significant acquisition from the standpoint of cost to Informatics or of present contribution to revenues or profits.

#### **Backlog**

On October 31, 1973, the uncompleted portion of existing contracts for custom services and proprietary products, excluding expected renewals of current contracts but including the current balance of the NFOD contract (contract year ends August 31, 1974) of approximately \$2,900,000, was approximately \$9,000,000. The comparable backlog at October 31, 1972, was approximately \$9,400,000, of which approximately \$2,500,000 was attributable to the NFOD contract year which ended August 31, 1973.

Because contract awards and extensions occur at different dates during the year, Informatics believes the comparison of its backlog with that of prior years has little significance. Substantially all of Informatics' contracts with government agencies and private business are funded for periods of twelve months or less; however, these typically relate to projects extending over two or more years. Software products are normally installed and billed shortly after receipt of a firm order and, thus, normally contribute little to backlog.

#### **Contracts with Potential Losses**

At present, the Company is not under contract for any work which management believes will have a materially adverse effect upon the Company's earnings for the balance of the current fiscal year. The Company is presently performing various operations pursuant to a major contract for which, in the past, material losses were forecast and for which appropriate reserves were established aggregating \$290,000 as at the end of fiscal 1973. A general review of the Company's contracts as of December 31, 1973, showed to the satisfaction of the Company's management that the reserves for various potential contract losses were adequate.

#### **Competition**

Informatics encounters intense competition from a number of firms, including computer manufacturers, many of which are substantially larger and have greater financial resources than Informatics. In addition, major industrial organizations and governmental agencies usually maintain sizeable staffs of professional personnel engaged in activities constituting indirect competition and occasionally direct competition.



Within the past few years, IBM, the dominant EDP hardware manufacturer and software supplier, has begun supplying software products and services priced separately from its computers, and it has sold such software directly in competition with independent software suppliers such as Informatics. Several other computer manufacturers have followed IBM's practice. While Informatics is unable to predict the future effect of these "unbundling" practices, in the opinion of management they have not, as of December 1973, materially adversely affected Informatics' revenues or profits.

Reliable data on the composition of revenues and profits of most of Informatics' principal competitors are not available. For this reason, Informatics' management cannot reliably determine its relative position in the software industry. Although its name usually appears on lists of prominent suppliers of custom and product software, Informatics' management does not believe that it is a major factor in the software and information services industry taken as a whole.

Informatics seeks protection of its software proprietary products and trade secrets. It maintains non-disclosure agreements with its customers and personnel; it obtains federal copyrights; and it has applied for patents for the MARK IV File Management System in the United States, has been granted a patent in the United Kingdom and has a patent application pending in Canada. Informatics' management believes that its competitive position depends primarily on the technical competence and creative ability of its personnel and that its business is not materially dependent on copyright or patent protection.

#### **Economic Controls**

Informatics is subject to regulations issued from time to time by agencies of the federal government pertaining to economic controls under the Economic Stabilization Act, as amended, which authorizes the stabilization of prices, wages and other matters. While Informatics is unable to predict the effects on its business of future governmental action in this area, in the opinion of management, its business had not been materially adversely affected by such controls through December 1973. The business of Informatics is not directly affected by present federal, state or local regulation relating to environmental protection.

#### **Renegotiation**

During fiscal 1973, approximately 39% of Informatics' revenues was subject to renegotiation under the Renegotiation Act of 1951, as amended, compared with approximately 52% for fiscal 1972. Informatics has filed reports with the Renegotiation Board for each of its fiscal years through 1972 and is in the process of preparing the report required for fiscal 1973; all years through 1972 have been cleared without refund. Informatics' management believes that the Company has not realized any excessive profits for the fiscal year and interim period subsequent to the fiscal years so cleared, and no reserve against such a refund has been established.

#### **Prospects**

Near term prospects for the Company appear to be good, and management anticipates that the profits for the last quarter of fiscal year 1974 will be approximately the same as the average of the first three quarters. Sales of the MARK IV File Management System have contributed greatly to the recent profits of the Company; and it is expected that the trend of increasing sales of MARK IV will continue, although there can be no certainty as to the effects of future competition and of general economic factors.

#### **Research and Development**

Approximately \$650,000 was spent by Informatics during the six months ended September 29, 1973, on activities relating to the development of new products or services or the improvement of existing products or services. Informatics had approximately 43 professional employees engaged full time in these activities during the past fiscal year. The accounting treatment of these costs is described in Note 1(c) of Notes to Consolidated Financial Statements.



### Employee Relations

Informatics' operations depend significantly upon the maintenance of a highly trained staff of professional employees. Of 739 persons employed full-time by Informatics in October 1973, 498 are professional staff members. Approximately 74% of the professional staff has bachelor degrees and 22% holds advanced degrees in fields related to Informatics' business such as mathematics, engineering, the physical sciences and business administration. These figures do not include approximately 100-125 part-time employees employed primarily at SDA.

Informatics enjoys satisfactory employee relations. It is not a party to any collective bargaining agreement.

### Profit Sharing Plan

All full time employees (including officers) who have one year of service with Informatics or its operating subsidiaries are eligible to participate in the Informatics Qualified Profit Sharing Plan. Allocations to individual participants are based upon salary and years of service according to a formula. Contributions to the Qualified Profit Sharing Plan are discretionary with the Board of Directors but subject to a maximum limit of 15% of the total salaries of participants. Informatics and its subsidiaries contributed \$184,000 to the Qualified Profit Sharing Plan for its 1973 fiscal year. As of September 29, 1973, \$101,000 had been accrued for possible contribution to the Qualified Profit Sharing Plan for fiscal 1974, and subsequently \$100,000 was contributed to the Plan.

The Company is continuing to accrue funds for contribution to the Qualified Profit Sharing Plan consistent with past practices. The management of Informatics presently intends to continue the Qualified Profit Sharing Plan with modifications and prior to the effective date of the merger funds in addition to those mentioned in the preceding paragraph may be contributed to the Qualified Profit Sharing Plan. If, however, the Qualified Profit Sharing Plan is terminated, it is contemplated that participants would receive either a lump sum distribution or an annuity based on their accrued benefits as of the effective date of the merger.

## CERTAIN RECENT DEVELOPMENTS

### SDA Corporation

On June 12, 1973, the Company acquired, on a pooling of interests basis, the assets (subject to substantially all the liabilities) of SDA Corporation of Delaware ("SDA"), Cheverly, Maryland, for 141,167 shares of the Company's Common Stock. In connection with this acquisition, the Company assumed certain qualified stock options and granted non-qualified stock options to replace similar options previously granted by SDA to its employees (see "MANAGEMENT, Assumed Options" and "SDA Corporation Non-Qualified Stock Options," page 25). SDA, which was organized in 1969, provides data processing services primarily in the development of computer data banks, including source data automation systems and services using optical character readers and other techniques. Based on information supplied by SDA, as of December 31, 1972, SDA had a net worth of \$230,878, and for the year ended on that date, it had revenues of \$1,027,500 and net income of \$66,500. SDA revenues and net income were \$359,000 and \$4,000, respectively, for the three months ended March 31, 1973 (the close of Informatics fiscal year), and \$754,000 and \$56,000, respectively, for the six months ended September 29, 1973.

### Parsons & Williams A.G.

On January 2, 1974, Informatics acquired, through a wholly-owned subsidiary, substantially all of the assets (subject to certain liabilities) of Parsons & Williams A.G., a Swiss corporation ("Parsons & Williams"), for \$88,842 in cash, plus certain contingent "earn-out payments". Parsons & Williams is engaged in the business of selling, licensing, and otherwise exploiting computer software, including PRODUCTION IV. See "INFORMATICS, Proprietary Software Products," page 16.



transaction between Transport and Equimatics, the award of damages in the amount of \$854,978 and an injunction against all defendants prohibiting them from engaging in any activity which would lead to the consummation of the merger. Computer and Informatics have agreed that, unless they are enjoined from consummating the merger, they waive with respect to this action the condition to the obligation of each that no action or proceeding be pending to restrain or prohibit the consummation of the merger or seeking damages. In addition, ELHC has confirmed that the action is deemed included in the indemnification provisions of paragraph 3 of the Undertaking appended to the Merger Agreement. The parties to this action have agreed in principle to a settlement thereof, although the documents providing for the settlement have not as yet been executed. The settlement provides that Equimatics will purchase for \$110,000 in cash the warrant referred to above and will issue to Transport new notes bearing interest at the rate of 8% per annum in lieu of the notes referred to above. In addition, the proposed settlement provides for exchange of releases and for a dismissal with prejudice of the action by Transport.

Informatics is not a party to any other pending litigation, except routine matters arising in the ordinary course of business which in the opinion of Informatics management will not have a material adverse effect, individually and in the aggregate, upon the business or financial condition of Informatics.

### EQUIMATICS

Equimatics was formed in December 1971 by The Equitable and Informatics as a jointly owned company to develop a data services organization with emphasis directed to the support of the insurance, health care and related industries.

#### Business

Equimatics develops computer based systems in support of many activities which are commonly shared by the insurance, health care and related industries. Computer based programs of this type are called proprietary application software. The individual application packages become building blocks of total systems.

Equimatics' business activity falls into the following categories:

- Proprietary Application Software Products
- Application Custom Services
- Application Production Services
- Communications Oriented Data Services

The software applications are directed primarily to customers in the life, health, property and casualty insurance businesses. Equimatics seeks to develop these business areas through its own development projects, joint development projects engaged in with client companies and direct contract work.

Proprietary Application Software Products is the largest activity of Equimatics, accounting for approximately 40% of its current revenues. Application Custom Services account for approximately 10% of current revenues and together with the Proprietary Application Software Products provide the basis for understanding and automating client services through the offered Application Production Services, representing approximately 20% of current revenues. The latter activity provides the client with Equimatics' operated hardware, software and associated personnel, as an alternative to the client's establishing and maintaining its own resource facility.

Communications Oriented Data Services produce approximately 30% of the present revenue level. Of this amount approximately 50% relates to the processing of Medicare claims for the four states administered by The Equitable. The balance consists of providing time-sharing services, mostly



to The Equitable. Communications Oriented Data Services utilize an IBM 370-145 computer rented from IBM and associated peripherals most of which are also rented from IBM. Application Production Services operates an IBM 370-145, and two IBM 360-30 computers. The IBM 370-145 computer and one of the IBM 360-30 computers are owned by an insurance company which is a customer of Equimatics and makes them available to Equimatics in connection with the performance of services under a long term contract with that company. The other IBM 360-30 computer is leased from an unaffiliated third party.

It is planned that the software development effort will lead to application capabilities which will also be suitable for operations on the Communications Oriented Data Services system. To achieve this objective it is intended that Communications Oriented Data Services gradually develop a national communications network which will be capable of providing access to Equimatics' software applications from terminal devices located on the premises of client companies.

Proprietary Application Software Products can be used in several lines of insurance business, including ordinary life, credit life, variable life, and health and accident. The products are designed to support several major operating activities of a life insurance company, including the functions of policy issue, policyholder administration, investment and accounting. In addition, specific application software modules support agency operations, underwriting, actuarial and related accounting activities.

Equimatics offers to convert its clients' life insurance operations from manual procedures to computer based, automated procedures. Equimatics will license its proprietary software modules in performing this conversion. Often the client will have acquired IBM's proprietary application software package, known as the Consolidated Function Ordinary system and, in such a case, Equimatics will provide enhancement modules to produce a more complete system.

Equimatics currently is developing an integration of these and other newly defined enhancement modules in order to offer a comprehensive and integrated total system suitable for medium to large-sized insurance companies. As envisioned, this system will perform overall policy issuance and administration functions for several lines of business. Six client organizations are participating as sponsors in the development of this new system.

Equimatics offers two major products for use in the investment operations of insurance companies, a Stock and Bond Portfolio Accounting System and a Mortgage Loan Accounting System.

Equimatics is presently developing a new administrative system to support the recently formed Equitable subsidiary, The Equitable Variable Life Insurance Company. It is anticipated that Equimatics will provide the data processing production services support to this entity beginning in mid-1974.

Equimatics presently has a client list of approximately one hundred thirty insurance companies. The revenues of Equimatics were approximately \$2.28 million in the fiscal year ended December 1, 1972, and are expected to reach approximately \$4 million in fiscal 1973. The revenue contribution by The Equitable to the above figures is approximately 15% and approximately 37%, respectively. Equimatics is operating at a loss. In the opinion of Equimatics' management, this loss is principally due to start up and product development costs.

#### **Property**

Equimatics leases approximately 35,100 square feet of space in Fairfield, New Jersey, and in Dallas and Fort Worth, Texas, at an aggregate minimum annual rental of approximately \$151,000. Of such space, approximately 18,000 square feet at 6 Kingsbridge Road, Fairfield, New Jersey are used for Equimatics' principal offices and computer facilities and are held under a lease expiring on January 31, 1977, providing for a minimum annual rental of \$62,000 (plus real estate taxes); approximately 10,159 square feet at 1025 Elm Street, Dallas, Texas are used for the principal offices and computer facilities of Equimatics' United Systems Division and are held under a lease which expired on September 30,







HALDER - v. INFORMATICS

DATE	NR.	PROCEEDINGS	
6-11-75		By JUDD, J.-Order dtd 6-11-75 allowing plttf to proceed in forma pauperis filed.	
6-11-75		Complaint filed. Summons issued.	(1)
6-18-75		Summons returned & filed/Executed.	(2)
7-9-75		Request to enter default filed.	(3)
7-10-75		Default of defts Informatic and Equimatics Inc. noted on document #4.	(4)
7-11-75		Motion to extend defts time to answer filed.	(5)
7-11-75		By MISHLER, CH. J.-Order granting motion for enlargement of time to answer dtd 7-9-75 filed. Defts have until 8-1-75 to file their Answer. See document # 5.	
7-14-75		Motion to set aside entry of default filed.	(6)
7-14-75		By MISHLER, CH. J.- Order vacating entry of default & extending time to answer complaint to 8-1-75 filed.(on document #6) (p/c mailed to attys).	(6)
7-24-75		Interrogatories filed.	(7)
7/31/75		ANSWER of defts filed.	(8)
8-27-75		Notice to take deposition of plttf filed.	(9)
9/13/75		Notice of Motion, ret. 9/19/75 filed re: for an order compelling the debt to answer interrogatories , etc.	(10)
9-19-75		Before MISHLER, CH. J.-Pltffs motion compelling the debt to answer interrogatories adj'd to 10-10-75.	
10-8-75		Memorandum of law and affidavit of Robert J. Miller in opposition to plttf's motion for an order compelling answers to interrogatories filed.	(11/12)
10/10/75		Before MISHLER, CH. J.- Case called- Pltff's motion compelling the debt to answer interrogatories, etc. argued- On representation by the debt of good faith, the plttf's motion to compel the debt to answer interrogatories , etc. is denied.	
2-9-76		COPY of letter dtd 2-5-76 from Ch. J. Mishler filed re setting date for trial: Feb. 10, 1976 at 10 A.M.	(13)
2-10-76		Before Mishler, Ch. J. - Case called - PLNTFF not ready for trial & debt. ready. Trial ordered & begun - non jury. For failure of the plntff to proceed to trial the complaint as to the debt., Informatics Inc., is dismissed. Clerk to enter judgment in favor of the debt. and against the plntff dismissing the complaint. Trial concluded.	
2-10-76		Before MISHLER, CH. J. - Case called. Pltff not ready for trial. Defts ready. Trial ordered & begun.(non-jury). For failure of the plttf to proceed to trial the complaint is dismissed as to defts Sperry Rand Corp, Quotron Systems, Inc. & Informatics, Inc./Clerk to enter judgment in favor of the defts and against the plttf dismissing the complaint. Trial concluded.	
2-13-76		Judgment of dismissal filed in 76C-1069(p/c mailed to attys)	
2-17-76		Deposition of Halder filed.	(14)
2-23-86		JUDGMENT dismissing the complaint as to Equimatics filed. See 74C 1069	
3-12-76		Notice of appeal filed. Copy mailed to C of A. and debt.	(15)
3-16-76		Notice of taxation filed.	(16)
3-16-76		Bill of Costs filed. Costs taxed in the amt of \$168.70 as against plttf. (See doc. #10)	
4-21-76		Above record certified and sent to the Court of Appeals.	
4-22-76		By MISHLER, CH. J.- Order dtd 4-21-76 that requested transcripts of the consolidated trial be furnished to plntff at government expense filed in 74 C 1069 (see doc. #35).	

1  
2 UNITED STATES DISTRICT COURT  
3 EASTERN DISTRICT OF NEW YORK

4 -----x  
5 HALDER :  
6 Plaintiff : 74 C 1069  
7 against : 74 C 1376  
8 SPERRY RAND ET AL. : 74 C 1377  
9 Defendants : 74 C 1531  
74 C 1532  
74 C 1552  
75 C 925  
75 C 1761  
10 -----x

11  
12 United States Courthouse  
13 Brooklyn, New York

14 February 10, 1976  
15 10:00 a.m.

16 B e f o r e:

17 HONORABLE JACOB MISHLER,

18 Ch. U.S.D.J.  
19  
20  
21  
22  
23

24 SHELDON SILVERMAN  
25 Official Court Reporter



oriented to do the job for us.

MR. STRASSBERG: No further questions.

THE COURT: For the failure and refusal of the plaintiff to proceed, the complaints are dismissed in Halder against Sperry Rand Corp., Halder against Quotron Systems, Inc., and Halder against Informatics, Inc. The clerk is directed to enter judgment in favor of the defendants and against the plaintiff dismissing the complaints.

I hope, gentlemen, that in the other actions, as I indicated, the pretrial discovery be as complete as you can possibly make it, keeping in mind that this plaintiff is proceeding pro se. As soon as all the proceedings have been completed, I will set it down for a trial, consolidated trial. I tell you, Mr. Halder, that I suggest you do everything in your power to get ready. This Court will not countenance delay, whether it's pro se or by attorney. We have a certain amount of understanding for the limitations of a layman who comes in pro se. You're not just the ordinary layman who comes in. You've carefully studied the statute, carefully studied the procedures.

I find that your refusal to proceed today was